The Burger Court Opinion Writing Database

Sosna v. Iowa

419 U.S. 393 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

5

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
HE CHIEF JUSTICE

October 30, 1974

Re: 73-762 - Sosna v. Iowa

Dear Bill:

I am in general agreement with your proposed approach to a per curiam disposition in this case.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

Wm Doyle
00PM

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 20, 1974

Re: 73-762 - Sosna v. Iowa

Dear Bill:

Please join me.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 31, 1974

Dear Bill:

As to Sosna v. Iowa, 73-762:

First, I do not see any Younger problem in this case. But I could join Potter's proposed treatment of it.

Second, I agree with you on mootness.

Third, I agree with you on the merits.

William O. Douglas

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 21, 1974

Dear Bill:

Please join me in your opinion in 73-762, SOSNA V. IOWA.

WILLIAM O. DOUGLAS

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 12, 1974

RE: No. 73-762 Sosna v. Iowa

Dear Thurgood:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 30, 1974

Re: No. 73-762, Sosna v. Iowa

Dear Bill,

I am in tentative agreement with your conclusions on two of the three issues discussed in your letter to the Chief Justice of October 29. I differ only as to the Younger issue. Specifically, it seems to me that, quite apart from the fact that the state divorce action was a civil suit in which the State itself was not a party, there is no conceivable Younger issue here because there was no state litigation of any kind pending at the time Mrs. Sosna brought her federal suit. (See Bodie v. Connecticut)

I am confident, however, that despite our possible differences on the Younger issue, you will be able in an opinion to deal with it in a way that will cause me no real trouble. Something along the following lines would satisfy me:

> It has been suggested that the appellant's federal suit was barred by the doctrine of Younger v. Harris, even though the state suit was not a criminal prosecution and even though it had terminated before the commencement of the federal litigation. This is a question we need not pursue, however, because the State has here expressly declined to assert any Younger claim.

Wm. Douglas

Oct 74

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 22, 1974

Re: No. 73-762, Sosna v. Iowa

Dear Bill,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 5, 1974

Re: No. 73-762 - Sosna v. Iowa

Dear Bill:

I am working on this case and ask that it go over for another week.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 12-16-74

No. 73-762

Recirculated: _____

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE WHITE, dissenting.

It is axiomatic that Art. III of the Constitution imposes a "threshold requirement . . . that those who seek to invoke the power of federal courts must allege an actual case or controversy." *O'Shea* v. *Littleton*, 414 U. S. 488, 493 (1974); *Flast* v. *Cohen*, 392 U. S. 83, 94–101 (1968); *Jenkins* v. *McKeithen*, 395 U. S. 411, 421–425 (1969 (opinion of MARSHALL, J.). To satisfy the requirement, plaintiffs must allege "some threatened or actual injury," *Linda R. S.* v. *Richard D.*, 410 U. S. 614, 617 (1973), that is "real and immediate" and not conjectural or hypothetical. *Golden* v. *Zwickler*, 394 U. S. 103, 108–109 (1969); *Maryland Casualty Co.* v. *Pacific Co.*, 312 U. S. 270, 273 (1941); *United Public Workers* v. *Mitchell*, 330 U. S. 75, 89–91 (1947). Furthermore, and of greatest relevance here,

> "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination

3, 4

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE WHITE, dissenting.

It is axiomatic that Art. III of the Constitution imposes a "threshold requirement . . . that those who seek to invoke the power of federal courts must allege an actual case or controversy." *O'Shea* v. *Littleton*, 414 U. S. 488, 493 (1974); *Flast* v. *Cohen*, 392 U. S. 83, 94–101 (1968); *Jenkins* v. *McKeithen*, 395 U. S. 411, 421–425 (1969 (opinion of MARSHALL, J.). To satisfy the requirement, plaintiffs must allege "some threatened or actual injury," *Linda R. S.* v. *Richard D.*, 410 U. S. 614, 617 (1973), that is "real and immediate" and not conjectural or hypothetical. *Golden* v. *Zwickler*, 394 U. S. 103, 108–109 (1969); *Maryland Casualty Co.* v. *Pacific Co.*, 312 U. S. 270, 273 (1941); *United Public Workers* v. *Mitchell*, 330 U. S. 75, 89–91 (1947). Furthermore, and of greatest relevance here,

> "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 73-762

Recirculated: DEC 4 19

1974

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE MARSHALL, dissenting.

The Court today departs sharply from the course we have followed in analyzing durational residency requirements since *Shapiro* v. *Thompson,* 394 U. S. 618 (1969). Because I think the principles set out in that case and its progeny compel reversal here, I respectfully dissent.

As we have made clear in *Shapiro* and subsequent cases, any classification that penalizes exercise of the constitutional right to travel is invalid unless it is justified by a compelling governmental interest. As recently as last Term we held that the right to travel requires that States provide the same vital governmental benefits and privileges to recent immigrants that they do to long-time residents. *Memorial Hospital* v. *Maricopa County,* 415 U. S. 250, 261 (1974). Although we recognized that not all durational residency requirements are penalties upon the exercise of the right to travel interstate,[1] we held that free medical aid, like voting, see *Dunn* v. *Blumstein,* 405 U. S. 330 (1972), and welfare assistance, see *Shapiro* v. *Thompson, supra,* was of such fundamental importance that the State could not constitutionally condition its receipts upon long-term residence. After examining Arizona's justifications for restricting the

[1] *Memorial Hospital* v. *Maricopa County, supra,* 415 U. S., at 256–259; see also *Shapiro* v. *Thompson, supra,* 394 U. S., at 638 n. 21.

Wm. Douglas Dec 1974

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmu
Mr. Justice Powell
Mr. Justice Rehnqui

2nd DRAFT

From: Marshall, J.

Circulated: _____

Recirculated: DEC 11 1

Dec 11, 197

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al. | On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE MARSHALL, dissenting.

The Court today departs sharply from the course we have followed in analyzing durational residency requirements since *Shapiro* v. *Thompson*, 394 U. S. 618 (1969). Because I think the principles set out in that case and its progeny compel reversal here, I respectfully dissent.

As we have made clear in *Shapiro* and subsequent cases, any classification that penalizes exercise of the constitutional right to travel is invalid unless it is justified by a compelling governmental interest. As recently as last Term we held that the right to travel requires that States provide the same vital governmental benefits and privileges to recent immigrants that they do to long-time residents. *Memorial Hospital* v. *Maricopa County*, 415 U. S. 250, 261 (1974). Although we recognized that not all durational residency requirements are penalties upon the exercise of the right to travel interstate,[1] we held that free medical aid, like voting, see *Dunn* v. *Blumstein*, 405 U. S. 330 (1972), and welfare assistance, see *Shapiro* v. *Thompson*, *supra*, was of such fundamental importance that the State could not constitutionally condition its receipt upon long-term residence. After examining Arizona's justifications for restricting the

[1] *Memorial Hospital* v. *Maricopa County*, *supra*, 415 U. S., at 256–259; see also *Shapiro* v. *Thompson*, *supra*, 394 U. S., at 638 n. 21.

Wm. Douglas, Oct 10/74

1, 4

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

Circulated: _____

Recirculated: DEC 19

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Court today departs sharply from the course we have followed in analyzing durational residency requirements since *Shapiro* v. *Thompson,* 394 U. S. 618 (1969). Because I think the principles set out in that case and its progeny compel reversal here, I respectfully dissent.

As we have made clear in *Shapiro* and subsequent cases, any classification that penalizes exercise of the constitutional right to travel is invalid unless it is justified by a compelling governmental interest. As recently as last Term we held that the right to travel requires that States provide the same vital governmental benefits and privileges to recent immigrants that they do to long-time residents. *Memorial Hospital* v. *Maricopa County,* 415 U. S. 250, 261 (1974). Although we recognized that not all durational residency requirements are penalties upon the exercise of the right to travel interstate,[1] we held that free medical aid, like voting, see *Dunn* v. *Blumstein,* 405 U. S. 330 (1972), and welfare assistance, see *Shapiro* v. *Thompson, supra,* was of such fundamental importance that the State could not constitutionally condition its receipt upon long-term residence. After examining Arizona's justifications for restricting the

[1] *Memorial Hospital* v. *Maricopa County,* 415 U. S., at 256–259; see also *Shapiro* v. *Thompson,* 394 U. S., at 638 n. 21.

Wm. Douglas
Oct 1974

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1974

Re: No. 73-762 - Sosna v. Iowa

Dear Bill:

At this early point I think I could go along with your approach to an opinion in this case.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

Oct 74
WM Douglas

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 4, 1974

Re: No. 73-762 - Sosna v. Iowa

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 31, 1974

No. 73-762 Sosna v. Iowa

Dear Bill:

I am generally in accord with your outline of an opinion in the above case.

On the Younger issue, I like Potter's suggested paragraph.

I also agree with Potter that, in view of the importance of the mootness issue, this should be a signed opinion.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

December 9, 1974

No. 73-762 Sosna v. Iowa

Dear Bill:

As you know from our casual conversations, I have been "hung up" on your circulation in the above case because it seems to open the door to class action litigation in which no identifiable parties have the slightest interest.

Perhaps it is indicative of my ancient age at the bar, but I am still repelled by the spectacle of a lawyer arguing a case in our Court when we all know that there is no identifiable party in interest who even knows that the case is being heard; no client with whom the lawyer can confer, or who can give the lawyer instructions whether to continue the litigation; and no one, other than the lawyer or some self-appointed organization with a generalized interest, to pay court costs, printing costs and legal fees. We have seen recent examples of this in Ellis, Sosna and other cases. When I was in law school this performance would be characterized as champerty and maintenance.

I recognize, of course, that there are genuine cases "capable of repetition, but evading review". This is a reality which is now recognized, and perhaps is necessary to assure federal vindication of certain claims. In any event, I accept this inroad into ancient concepts of "case and controversy". But I do wish not to expand the exception, and it seems to me that Sosna - as presently drafted - can be construed to be more open ended than previous class action decisions (e.g. Burney) have been.

With these thoughts in mind, I have taken the liberty of drafting a rider or two and making certain other conforming changes in Part I of your Sosna draft. These are mere suggestions enclosed for your consideration. If you accept them in principle, I have no doubt that you can reframe them more effectively.

I call your attention to my substitute for your footnote No. 11. I am writing Gerstein. It clearly would be moot but for the "evading review" exception. Moreover, the record in Gerstein does not clearly indicate that the case would be controlled by the Sosna rationale of viewing the certification of the class as the controlling date for determining mootness. I therefore have suggested an alteration to your opinion that would facilitate the mootness discussion in mine.

Additionally, I have suggested that you delete the first sentence to footnote No. 12. I read your present footnote to suggest that the problem in Burney was the possibility of the absence of a class that retained an interest in the litigation. In my view, that tends unnecessarily to equate Burney with the line of cases in which the Court cannot reasonably demand that the suit be brought by a plaintiff who retains a personal interest in the controversy throughout its entirety.

I will be happy to discuss any of this with you.

Sincerely,

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 12, 1974

No. 73-762 Sosna v. Iowa

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 29, 1974

Re: No. 73-762 - Sosna v. Iowa

Dear Chief:

Review of my Conference notes makes me uncertain as to whether my views in this case can command the support of a majority of the Court. This is in no way your responsibility, since on the issue of "mootness", which is the one that most sharply divided the Conference, I "passed". I have now come to rest on that point, but thought I would circulate this memorandum outlining how I would try to draft the proposed per curiam, and see if any responses I get indicate at least a willingness to see what is written along these lines with a view to ultimately joining it. Certainly if five members of the Court disagree outright with any of the positions, I would think the opinion should be reassigned.

Potter led the discussion in the case, and observed that there were three issues, and I took it from the ensuing discussion that almost all of us agreed with him on this point. These issues, and the way I would propose to dispose of them, are:

(1) Younger: Since this doctrine is based on comity, and exists for the benefit of the states, the fact that the state has here expressly declined to assert it should remove it as an issue.

(2) "Mootness". This has given me a lot of trouble, and led me to the conclusion that not everything we have said in recent cases such as Burney, 409 U.S. 540 (1973); Dunn, 405 U.S. 330; Moore, 394 U.S. 814; Rosario, 410 U.S. 752; and Richardson v. Ramirez, O.T. 1973, can be reconciled. Potter in his discussion referred to the case of Vaughan v. Bower, 313 F. Supp. 37 (1970), affirmed summarily here, for the proposition that a plaintiff who had obtained a divorce could continue to represent a class which had not obtained a divorce and was challenging a durational residency requirement. The test of Bailey v. Patterson, 369 U.S. 31, cited in Burney, would thus be applied at the time of the District Court's determination that the action was a proper class action. On the record in this case, with a stipulation by the state that there exists a class of persons whom the plaintiff represented at the time of the determination that a class action was proper, I would find the case was not moot, although I would feel differently if there had not been a determination in favor of a class action by the District Court.

(3) On the merits, which I show all of us except Bill Brennan, Byron, and Thurgood reaching, I would uphold the validity of the state law for the reasons stated by Potter.

I think the most intricate issue is the one of "mootness", and I think some sort of solution consistent with the

requirement of case or controversy that avoids a yo-yo effect -- whereby we bring a case here thinking we will get a substantive issue, hear that issue argued, but find ourselves unable to decide the issue because of changes in the circumstances of the named class action plaintiff -- ought to be found.

Sincerely,

WJB

The Chief Justice

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, v. State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[November —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state." [1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth information required by section 598.5,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 25, 1974

Re: 73-762 - Sosna v. Iowa

Dear Lewis:

I took a look at Ford Motor Co. v. Department of the Treasury of Indiana, 323 U.S. 459 (1945), which you called my attention to in connection with footnote 2 in the present draft of the opinion in Sosna. I agree with you that the question needs more extended treatment than it is presently given in footnote 2.

As I read Ford, Indiana had not raised the issue of sovereign immunity in the trial court, but did raise it on appeal to this Court; to that extent the case was like Edelman v. Jordan, 415 U.S. 651 (1974), where the State of Illinois had not asserted sovereign immunity in the District Court, but had asserted it in the Court of Appeals and in this Court, and we said that was permissible. 415 U.S., at 677-78.

We could, of course, go still further and say that even though a state Attorney General were to waive the defense in the District Court, and adhere to his waiver in this Court, we would nonetheless be bound to examine state law on our own initiative to see whether the law of his state permitted him to make such a waiver. When I drafted Edelman, I deliberately

No

I called Bill & approved his treatment of Ford. I still have doubts as to his treatment of mootness in class action cases. Does a genuine case or controversy still exist? Who - what identifiable parties - does counsel still represent?

avoided going this far, saying that "the Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court", 415 U.S., at 678, but leaving open the question of whether we would have to examine every such case sua sponte even if the contention were not pressed at any time during the litigation.

I enclose a proposed addition to the present text of footnote 2 in Sosna, which still leaves the question open by a kind of a bob-tailed resolution of the issue of Iowa law. If pressed, I think I would be inclined to say that if a state waives the defense in a trial court, and does not assert it here, we could go ahead and decide the merits, but I would rather not have to decide it one way or the other in this case. If you think the addition of the language in the attached draft would satisfy you, please let me know and I will recircu the opinion with this language included.

Sincerely,

Mr. Justice Powell

Attachment

WHR:Redraft:11/25/74

Insert to fn 2 - Sosna ?

While the failure of the State to raise the defense of sovereign immunity in the District Court would not have barred Iowa from raising that issue in this Court, Edelman v. Jordan, 415 U.S. 651 (1974); Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459 (1945), no such defense has been advanced in this Court. The failure of Iowa to raise the issue has likewise left us without any guidance from the parties' briefs as to the circumstances under which Iowa law permits waiver of the defense of sovereign immunity by attorneys representing the State. Our own examination of Iowa precedents discloses, however, that the Iowa Supreme Court has held that the State consents to suit and waives any defense of sovereign immunity by entering a voluntary appearance and defending a suit on the merits. McKeown v. Brown, 167 Iowa 489, 499, 149 N.W. 593, 597 (1914). The law of Iowa on the point therefore appears to be different from the law of Indiana treated in Ford, supra.

— 3, 13

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[November —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state."[1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5,

2, 8, 13-14

Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated:

Recirculated: DEC

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[November —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state."[1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 10, 1974

Re: No. 73-762 - Sosna v. Iowa

Dear Lewis:

I fully agree with the thrust of the changes that you have suggested in Sosna, and think the attached revised draft will satisfy you. I have distributed your suggested language in a couple of different places, but virtually all of it is still there.

Sincerely,

Bill

Mr. Justice Powell

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

4th DRAFT

Circulated: _____

Recirculated: DEC 12 1974

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[November —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state."[1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5,

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state."[1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5,

J—

8,14

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

6th DRAFT

SUPREME COURT OF THE UNITED STATES

DEC 30 197

No. 73-762

Carol Maureen Sosna, etc., Appellant, *v.* State of Iowa et al.	On Appeal from the United States District Court for the Northern District of Iowa.

[December —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Carol Sosna married Michael Sosna on September 5, 1964, in Michigan. They lived together in New York between October 1967 and August 1971, after which date they separated but continued to live in New York. In August 1972, appellant moved to Iowa with her three children, and the following month she petitioned the District Court of Jackson County, Iowa, for a dissolution of her marriage. Michael Sosna, who had been personally served with notice of the action when he came to Iowa to visit his children, made a special appearance to contest the jurisdiction of the Iowa court. The Iowa court dismissed the petition for lack of jurisdiction, finding that Michael Sosna was not a resident of Iowa and appellant had not been a resident of the State of Iowa for one year preceding the filing of her petition. In so doing the Iowa court applied the provisons of Iowa Code § 598.6 requiring that the petitioner in such an action be "for the last year a resident of the state."[1]

[1] Iowa Code § 598.6 provides:

"Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 21, 1975

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 73-762 - Sosna v. Iowa

Three cases have been held for our Sosna decision, one petition for certiorari and two appeals. I propose to dispose of them as follows:

No. 73-678 - Gallogly v. Larsen. Appeal from 3-judge USDC (D. R.I.), notice of appeal timely filed but docketed thirty days late:

Appellee Larsen moved from New York to Rhode Island on July 15, 1971. At an undisclosed time thereafter, he filed a petition for divorce from bed and board without commencing a divorce action. Relief was granted, and he then moved to amend this petition to a petition for absolute divorce. This motion was denied because he did not meet the two year residency requirement imposed by Rhode Island law.

Appellee then filed a section 1983 action in federal court against the judges of the family court of Rhode Island seeking declaratory, injunctive and monetary relief. There is no suggestion from the opinion or papers that the suit was brought as a class action. The three-judge court found the statute unconstitutional on both equal protection and due process grounds, relying on Dunn and Boddie, and rejecting the

Wm. Douglas
Oct 1974